

**WSR 21-24-016
EMERGENCY RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES**

[Filed November 19, 2021, 9:24 a.m., effective November 21, 2021]

Effective Date of Rule: November 21, 2021.

Purpose: Implement section 28, chapter 304, Laws of 2021, which authorizes licensing of outdoor nature-based (ONB) programs. The rules explain the application process, licensing criteria and quality standards, and enforcement process.

Citation of Rules Affected by this Order: New WAC 110-300E-0001, 110-300E-0005, 110-300E-0015, 110-300E-0020, and 110-300E-0400.

Statutory Authority for Adoption: Section 28, chapter 304, Laws of 2021.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Effective July 25, 2021, section 28, chapter 304, Laws of 2021, authorized the department to license ONB programs, to adopt rules governing those programs, and apply the early achievers quality standards to ONB programs so that they may receive federal child care subsidy funding. The department began permanent rule making and adopted emergency rules that took effect July 25, 2021, that implemented its immediate licensing authority granted by section 28, chapter 304, Laws of 2021. The emergency rules must remain in effect until the permanent rules adopted by the department take effect December 23, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 2, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 5, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 19, 2021.

Brenda Villarreal
Rules Coordinator

OTS-3212.7

Chapter 110-300E WAC

OUTDOOR NATURE-BASED PROGRAMS

NEW SECTION

WAC 110-300E-0001 Authority. (1) Chapter 43.216 RCW establishes the responsibility and authority for the department of children, youth, and families to set and enforce licensing requirements and standards for licensed child care agencies in Washington state, including the authority to adopt rules to implement chapter 43.216 RCW.

(2) Pursuant to section 28, chapter 304, Laws of 2021:

(a) The department must establish a licensed outdoor nature-based child care program.

(b) The department must adopt rules to implement the outdoor nature-based child care program and may waive or adapt licensing requirements when necessary to allow for the operation of outdoor classrooms in Washington state.

(c) The department must apply the early achievers program to the outdoor nature-based child care program to assess quality in outdoor learning environments and may waive or adapt early achievers requirements when necessary to allow for the operation of outdoor classrooms.

(d) A child care or early learning program operated by a federally recognized tribe may participate in the outdoor nature-based child care program through an interlocal agreement between the tribe and the department. The interlocal agreement must reflect the government-to-government relationship between the state and the tribe, including recognition of tribal sovereignty.

(3) Pursuant to RCW 43.216.250 (2)(b), the provisions of this chapter governing the physical facility, including buildings and other physical structures attached to buildings and premises, do not apply to licensed school-age programs that operate in facilities used by public or private schools. The department regulates only health, safety, and quality standards that do not relate to the physical facility for programs operating in facilities used by public or private schools.

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NEW SECTION

WAC 110-300E-0005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Agency" has the same meaning as described in RCW 43.216.010.

"Department" means the Washington state department of children, youth, and families (DCYF).

"Early learning" has the same meaning as described in RCW 43.216.010.

"Enforcement action" means denial, suspension, revocation, modification, or nonrenewal of a license pursuant to RCW 43.216.325(1) or assessment of civil monetary penalties (fines) pursuant to RCW 43.216.325(3).

"Outdoor nature-based program" has the same meaning as "outdoor nature-based child care" in RCW 43.216.010 (1)(e), which is an agency or an agency-offered program that:

(a) Enrolls preschool or school-age children;

(b) Provides early learning services to the enrolled children in an outdoor natural space approved by the department for not less than four hours per day or 50 percent of the daily program hours, whichever is less; and

(c) Teaches a nature-based curriculum to enrolled children.

"Provider" as used in this chapter means an early learning program that offers outdoor nature-based early learning services, and is licensed under and subject to the provisions of this chapter (also "licensee").

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NEW SECTION

WAC 110-300E-0015 Outdoor nature-based licensing agreement—Uniform rules. (1) Licensees under this chapter must agree, enter into, and comply with the terms and conditions of an outdoor, nature-based licensing agreement prepared by the department. The outdoor nature-based licensing agreement will require compliance with the following minimum terms and conditions:

(a) The terms and conditions detailed in the outdoor nature-based licensing agreement;

(b) The requirements of this chapter;

(c) The background check requirements contained in chapter 110-06 WAC, early learning background checks; and

(d) The requirements of the federal Child Care Development Fund (45 C.F.R. Part 98).

(2) To establish a uniform set of requirements for outdoor nature-based programs, the department may periodically update the outdoor nature-based licensing agreement, amend existing rules in this chapter, or draft new rules to be published under this chapter.

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NEW SECTION

WAC 110-300E-0020 Enforcement actions—Right of review—Process of seeking review. (1) The department is authorized by RCW 43.216.020, 43.216.065, 43.216.250, and 43.216.325 to take enforcement actions when a provider fails to comply with this chapter, chapter 110-06 WAC, early learning background checks, or chapter 43.216 RCW. Enforcement actions include civil monetary penalties and the denial, suspension, revocation, modification, or nonrenewal of a license.

(2) An applicant or provider has the right to appeal an enforcement action by requesting an adjudicative proceeding or "hearing" pursuant to the hearing rules codified in chapter 110-03 WAC, Administrative hearings.

(3) The department must issue a notice of violation to a provider when taking enforcement actions. A notice of violation must be sent certified mail or personal service and must include:

- (a) The reason why the department is taking the action;
- (b) The rules the provider failed to comply with;
- (c) The provider's right to appeal enforcement actions; and
- (d) How the provider may appeal and request a hearing.

(4) Fines must not exceed \$250 per day per violation.

(5) Fines may be:

(a) Assessed and collected with interest for each day a violation occurs;

(b) Imposed in addition to other enforcement actions; and

(c) Withdrawn or reduced if a provider comes into compliance during the notification period.

(6) A provider must pay fines within 28 calendar days after receiving a notice of violation unless:

(a) The office of financial recovery establishes a payment plan for the provider; or

(b) The provider requests a hearing, pursuant to chapter 110-03 WAC, Administrative hearings and RCW 43.216.335(3).

(7) The department may suspend or revoke a license if a provider fails to pay a fine within 28 calendar days or becomes delinquent in making payments, pursuant to RCW 43.216.327 and 43.216.335. If a provider's license is due for annual compliance, the department may elect not to continue the license for failure to pay a fine.

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NEW SECTION

WAC 110-300E-0400 Outdoor nature-based licenses—Application.

(1) After submitting to the department a signed outdoor nature-based licensing agreement pursuant to WAC 110-300E-0015, an applicant must submit a complete application to the department to receive an initial license, or be granted a continuation of a full license, to operate an outdoor nature-based program.

(2) Pursuant to RCW 43.216.305, the department must grant or deny a license or continuation of a full license within 90 days of receiving a complete application.

(3) After completing a department orientation an applicant must submit to the department a complete license application packet, pursuant to chapter 43.216 RCW. This requirement also applies to a change of ownership. A complete license application packet includes:

(a) Professional and background information about the applicant:

(i) A completed department application form;

(ii) A copy of the applicant's orientation certificate (orientation must be taken no more than 12 months prior to applying for a license);

(iii) A Washington state business license or a tribal, county, or city business or occupation license, if applicable;

(iv) Liability insurance, if applicable;

(v) A certificate of incorporation, partnership agreement, or similar business organization document, if applicable;

(vi) The license fee;

- (vii) A copy of current government issued photo identification;
 - (viii) A copy of Social Security card or sworn declaration stating that the applicant does not have one;
 - (ix) Employer identification number (EIN) if applicant plans to hire staff; and
 - (x) Employment and education verification. For example, diploma, transcripts, or a sworn declaration stating that the applicant cannot verify education requirements.
- (b) Information about the program to be licensed:
- (i) A site plan, including use of proposed licensed and unlicensed space, with identified emergency exits or emergency exit pathways;
 - (ii) Certificate of occupancy, if applicable;
 - (iii) Documentation, no more than three years old, from a licensed inspector, septic designer, or engineer that states the septic system and drain field are maintained and in working order, if applicable;
 - (iv) *E. coli* bacteria and nitrate testing results for well water that is no more than 12 months old, if applicable;
 - (v) A lead or arsenic evaluation agreement for program sites located in the Tacoma smelter plume (counties of King, Pierce, and Thurston) or the Everett smelter plume (county of Snohomish); and
 - (vi) Lead and copper test results for drinking water, if applicable.
- (c) Program days and hours of operation, including closure dates and holiday observances; and
- (d) The following information about program staff:
- (i) A list of staff members, and if applicable and known, staff persons and volunteers required to complete the background check process as outlined in chapter 110-06 WAC, early learning background checks; and
 - (ii) A resume for the applicant and each staff person, if applicable.
- (e) The following policy documents, which will be reviewed by the department and returned to the applicant:
- (i) Parent and program policies;
 - (ii) Staff policies;
 - (iii) An emergency preparedness plan; and
 - (iv) Health policies.
- (4) An applicant must submit the completed application packet at least 90 calendar days prior to the planned opening of the outdoor, nature-based program. The department will inspect the program space and all submitted application materials prior to issuing a license.
- (a) The 90 calendar days begins when the department receives a complete application packet.
 - (b) Incomplete application packets will be returned to the applicant for completion.
 - (c) An applicant who is unable to successfully complete the application and licensing process within 90 days may withdraw the application and reapply when the applicant is able to meet the licensing requirements. If the applicant has completed the steps of the application process within 90 days but an external barrier out of the applicant's control exists, the reapplication fee will be waived one time.
 - (d) An applicant who is unable to meet the application requirements and has not withdrawn his or her application will be denied a license, pursuant to RCW 43.216.325.

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